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In re Application of :
FRAY, Rupert, et al. :
Application No.: 09/762,769 : DECISION ON
PCT No.: PCT/GB99/02652 :
Int. Filing Date: 12 August 1999 : PAPERS
Priority Date: 12 August 1998 :
Attorney's Docket No.: PM 276653 : UNDER 37 CFR 1.42
For: EXPRESSION OF BACTERIAL SIGNAL :
MOLECULES IN PLANTS :

This is a decision on applicants' "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" filed 14 August 2001, which has been treated as a request for acceptance of the application filed on behalf of a deceased inventor under 37 CFR 1.42.

BACKGROUND

On 12 August 1999, applicants filed international application PCT/GB99/02652, which claimed a priority date of 12 August 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 24 February 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 15 December 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 12 February 2001.

On 13 February 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, a copy of the international application, the international preliminary examination report and a copy of the international search report with copies of the references cited therein.

On 14 March 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors and payment of the surcharge for late filing of oath or declaration were required. This Notification set a one month extendable period for reply.

On 14 August 2001, applicants submitted the instant "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371", which was accompanied by, *inter*

alia, a petition/fee for a four month extension of time, a Rule 63 declaration and power of attorney for patent application and a Rule 63 declaration and power of attorney by legal representative.

DISCUSSION

Under 37 CFR 1.42, the declaration must include the signature of the legal representative or the signature of all of the heirs (or if there is only one heir, the sole heir). The declaration is signed by Lesley A. Stewart as legal representative.

Under 37 CFR 1.497(b)(2), the declaration must include the residence, mailing address and citizenship of the person(s) signing on behalf of the deceased inventor (in addition to the full name and citizenship of the deceased inventor). The declaration and power of attorney declares that Lesley A. Stewart's "residence, post office address and citizenship are as stated below." However, the post office address field on the form is left blank. As such, the declaration fails to supply the post office address and does not fulfill the requirements of 37 CFR 1.497(b)(2).

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT. Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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